

CHEYENNE JONES *et al.*, )  
)  
Plaintiffs, )  
)  
vs. ) ORDER  
)  
COCA-COLA CONSOLIDATED, INC. *et* )  
*al.*, )  
)  
Defendants. )  
\_\_\_\_\_ )

refiling may be appropriate and ripe.

The Court now turns to Plaintiffs' Motion to Strike Surreply, (Doc. No. 77). In its October 8, 2021, Order, the Court granted Defendants leave to file a surreply "limited in scope to Defendants' response and rebuttal to Dr. Buetow's report and testimony," (Doc. No. 68, p. 3). Under Rule 12(f) of the Federal Rules of Civil Procedure, a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Fed. R. Civ. P. 12(f). "Although courts have broad discretion in disposing of motions to strike, such motions 'are generally viewed with disfavor because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.'" Chapman v. Duke Energy Carolinas, LLC, No. 3:09-cv-37-RJC, 2009 WL 1652463, at \*1 (W.D.N.C. June 11, 2009) (quoting Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 347 (4th Cir. 2001) (internal quotation marks and citations omitted in original). After review of Defendants' Surreply, (Doc. No. 70), the Court is not persuaded that Defendants' pleading runs afoul of the leave granted in its October 8, 2021, Order. Accordingly, and in light of the generally disfavored view of Rule 12(f) motions, the Court does not find it necessary or appropriate to resort to the drastic remedy of striking portions of Defendants' Surreply. Therefore, Plaintiff's Motion to Strike Surreply (Doc. No. 77) is DENIED.<sup>1</sup>


IT IS THEREFORE ORDERED that the Court DENIES Defendants' Motion to Exclude Under Federal Rule of Evidence 702 the Declaration and Opinions of Gerald Buetow (Doc. No. 71) without prejudice to Defendants refiling their Motion later in the proceedings, and DENIES Plaintiff's Motion to Strike Surreply (Doc. No. 77).

IT IS SO ORDERED.

---

<sup>1</sup> To the extent Defendants seek an award of costs associated with opposing Plaintiff's Motion, without citing any authority, the Court DENIES such request. See Campbell v. Five Star Quality Care – N.C., LLC, No. 3:21-cv-95, 2021 WL 5442221, at \*3 (W.D.N.C. Nov. 19, 2021) (denying Defendants' request for Rule 11 sanctions because Defendants failed to file a separate motion).

Signed: January 18, 2022

  
Frank D. Whitney  
United States District Judge

